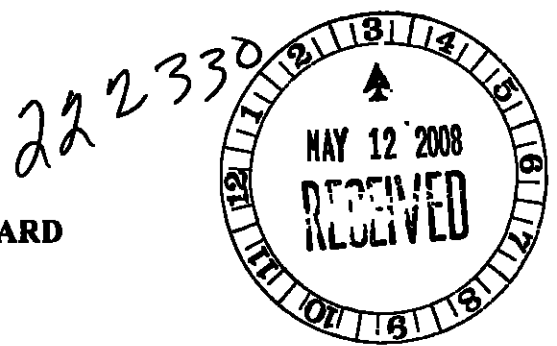


**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



\_\_\_\_\_  
Central Oregon & Pacific Railroad, Inc -  
Coos Bay Rail Line  
\_\_\_\_\_

) Finance Docket No. 35130  
)  
)  
)

ENTERED  
Office of Proceedings

MAY 12 2008

Part of  
Public Record

**MOTION FOR ISSUANCE OF A PROTECTIVE ORDER**

RailAmerica, Inc ("RailAmerica") and Central Oregon & Pacific Railroad, Inc. ("CORP") hereby move for the entry of a protective order in substantially the form attached hereto as Exhibit A. The order is required to permit CORP and RailAmerica to submit to the Board certain documents that contain proprietary and highly sensitive commercial terms, and to make such documents available to outside counsel for interested parties solely for use in this proceeding.

On April 10, 2008, the Board issued an Order in the above-captioned proceeding instructing CORP and RailAmerica to show cause why the Board should not consider CORP's September 21, 2007 embargo of its line between Coquille and Richardson, OR to be an unlawful abandonment and why CORP should not be required either to promptly repair the tunnels on the line and resume rail service or to seek abandonment authority. ("*Show Cause Order*"). Today CORP and RailAmerica are submitting their response to the Board's *Show Cause Order*, which contains certain highly confidential, commercially sensitive information related to the terms of CORP's business arrangements with Union Pacific Railroad Company.

The proposed Protective Order is necessary to protect this highly confidential information from public disclosure. The requested Protective Order will enable CORP and RailAmerica to present the confidential information to the Board (and, upon request, to outside

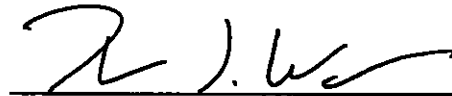
counsel for interested parties), while at the same time preserving the confidentiality of that sensitive information.

Accompanying this Motion are a draft Protective Order and Undertakings similar to those issued by the Board in other recent proceedings.

### **CONCLUSION**

For the foregoing reasons, Applicants respectfully request that the Board enter a Protective Order in substantially the form set forth in Appendix A to this Motion, including the forms of confidentiality undertakings that accompany it.

Respectfully submitted,



Scott G. Williams  
Senior Vice President and General Counsel  
RailAmerica, Inc  
5300 Broken Sound Blvd., N.W, 2nd Floor  
Boca Raton, FL 33487  
(561) 994-6015

Terence M. Hynes  
Donald H. Smith  
Matthew J. Warren  
Noah Clements  
Sidley Austin LLP  
1501 K Street, N W  
Washington, D.C. 20005  
(202) 736-8000

*Counsel for Central Oregon & Pacific  
Railroad, Inc and RailAmerica, Inc*

Dated: May 12, 2008

## **APPENDIX**

### **PROTECTIVE ORDER**

1. For purposes of this Protective Order.

(a) "Confidential Documents" means documents and other tangible materials containing or reflecting Confidential Information.

(b) "Confidential Information" means traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost work papers), the identification of shippers and receivers in conjunction with shipper-specific or other traffic data; the confidential terms of contracts with shippers or carriers; confidential financial and cost data; divisions of rates, trackage rights compensation levels and other compensation between carriers; and other confidential or proprietary business or personal information.

(c) "Designated Material" means any documents designated or stamped as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" in accordance with paragraph 2 or 3 of this Protective Order and any Confidential Information contained in such materials.

(d) "Proceedings" means those before the Surface Transportation Board (Board) concerning the transaction in STB Finance Docket No. 35130, and any related proceedings before the Board, and any judicial review proceedings arising from STB Finance Docket No. 35130 or from any related proceedings before the Board.

2. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, discovery response it produces, transcript of a deposition or hearing in which it participates, or pleading or other paper to be submitted, filed, or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and Confidential Documents as "CONFIDENTIAL." Any information or documents designated or stamped as "CONFIDENTIAL" shall be handled as provided for hereinafter.

3. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, or a discovery response it produces, or a transcript of a deposition or hearing in which it participates, or pleading or other paper to be submitted, filed, or served in these Proceedings contains shipper-specific rate or cost data; division of rates, trackage rights compensation levels, other compensation between carriers; or other competitively sensitive or proprietary information, then that party may designate and stamp such Confidential Information as "HIGHLY CONFIDENTIAL." Any information or documents so designated or stamped shall be handled as provided hereinafter.

4. Information and documents designated or stamped as "CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, or to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by

signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Protective Order.

5. Information and documents designated or stamped as "HIGHLY CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, to any employee of a party to these Proceedings, or to any other person or entity except to an outside counsel or outside consultant to a party to these Proceedings, or to an employee of such outside counsel or outside consultant, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit B to this Protective Order.

6. All parties must file simultaneously a public version of any Highly Confidential or Confidential submission filed with the Board whether the submission is designated a Highly Confidential Version or Confidential Version. When filing a Highly Confidential Version, the filing party does not need to file a Confidential Version with the Board, but must make available (simultaneously with the party's submission to the Board of its Highly Confidential Version) a Confidential Version reviewable by any other party's in-house counsel. The Confidential Version may be served on other parties in electronic format only. In lieu of preparing a Confidential Version, the filing party may (simultaneously with the party's submission to the Board of its Highly Confidential Version) make available to outside counsel for any other party a list of all "highly confidential" information that must be redacted from its Highly Confidential Version prior to review by in-house personnel, and outside counsel for any other party must then redact that material from the Highly Confidential Version before permitting any clients to review the submission.

7. Any party to these Proceedings may challenge the designation by any other party of information or documents as "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL" by filing a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenges.

8. Designated Material may not be used for any purposes, including without limitation any business, commercial or competitive purposes, other than the preparation and presentation of evidence and argument in STB Finance Docket No. 35130, any related proceedings before the Board, and/or any judicial review proceedings in connection with STB Finance Docket No. 35130 and/or with any related proceedings.

9. Any party who receives Designated Material in discovery shall destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the Board and retained by outside counsel for a party to these Proceedings) at the earlier of (1) such time as the party receiving the materials withdraws from these Proceedings, or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals or remands.

10. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as "Confidential Materials Subject to Protective Order." See 49 C.F.R. § 1104.14. All pleadings and other documents so

submitted shall be kept confidential by the Board and shall not be placed in the public docket in these Proceedings except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.

11. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than this Board in these Proceedings unless: (1) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not be placed in the public docket in the proceeding; or (2) the pleading or other document is submitted in a sealed package clearly marked, "Confidential Materials Subject to Request for Protective Order," and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require the pleading or other document be kept confidential and not be placed in the public docket in the proceeding, and requesting that, if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing party.

12. No party may present or otherwise use any Designated Material at a Board hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, to an administrative law judge or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge or other officer: (a) restrict attendance at the hearing during any discussion of such Designated Material; and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

13. If any party intends to use any Designated Material in the course of any deposition in these Proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in paragraph 11 of this Protective Order.

14. To the extent that materials reflecting Confidential Information are produced by a party in these Proceedings, and are held and/or used by the receiving person in compliance with this Protective Order, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. §§ 11323 or 11904, or of any other relevant provision of the ICC Termination Act of 1995.

15. All parties must comply with all of the provisions of this Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension of any of the provisions herein.

16. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party.

**Exhibit A**

**UNDERTAKING—CONFIDENTIAL MATERIAL**

I, \_\_\_\_\_, have read the Protective Order served on May \_\_, 2008, governing the production and use of Confidential Information and Confidential Documents concerning STB Finance Docket No. 35130, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No. 35130, any related proceedings before the Surface Transportation Board (Board), and/or any judicial review proceedings in connection with STB Finance Docket No. 35130 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hercof, and that, at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as "CONFIDENTIAL," other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Applicants or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity

Signed: \_\_\_\_\_

Affiliation: \_\_\_\_\_

Dated. \_\_\_\_\_

## **Exhibit B**

### **UNDERTAKING—HIGHLY CONFIDENTIAL MATERIAL**

I, \_\_\_\_\_, am outside [counsel][consultant] for \_\_\_\_\_, for whom I am acting in this proceeding. I have read the Protective Order served on May \_\_\_, 2007, governing the production and use of Confidential Information and Confidential Documents concerning STB Finance Docket No. 35130, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No. 35130, any related proceedings before the Surface Transportation Board (Board), or any judicial review proceedings in connection with STB Finance Docket No. 35130 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Highly Confidential Undertakings in the form hereof.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as "HIGHLY CONFIDENTIAL," that I will take all necessary steps to ensure that said information or documents be kept on a confidential basis by any outside counsel or outside consultants working with me, that under no circumstances will I permit access to said materials or information by employees of my client or its subsidiaries, affiliates, or owners, and that, at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting information or documents designated or stamped as "HIGHLY CONFIDENTIAL," other than file copies kept by outside counsel of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Applicants or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed: \_\_\_\_\_

OUTSIDE [COUNSEL] [CONSULTANT]

Dated: \_\_\_\_\_



## **CERTIFICATE OF SERVICE**

I hereby certify that, pursuant to the Board's Decision served April 11, 2008, I have caused the foregoing Motion for Issuance of a Protective Order of Central Oregon & Pacific Railroad, Inc. to Order to Show Cause to be served by overnight delivery service this 12th day of May, 2008 on the following

Governor Theodore R. Kulongoski  
State of Oregon  
160 State Capitol  
900 Court Street  
Salem, Oregon 97301-4047

Oregon International Port of Coos Bay  
Administration Office  
125 Central Avenue, Suite 300  
Coos Bay, OR 97420

J. Michael Hemmer  
Senior Vice President, Law and General Counsel  
Union Pacific Railroad Company  
1400 Douglas Street  
Omaha, NE 68179

Andy Jeffers  
Traffic Manager - Rail  
Roseburg Forest Products  
P.O. Box 1088  
Roseburg, OR 97470

Jerry Keck  
Toledo Area Manager  
Georgia-Pacific Corp  
1400 SE Butler Bridge Rd.  
Toledo, OR 97391-1900

Paul Brewster  
Plant Manager  
American Bridge Co.  
135 American Bridge Way  
Reedsport, OR 97467

Jason W. Smith  
Mill Manager  
Southport Forest Products  
P.O. Box 298  
Coos Bay, OR 97420

Allen Dasher  
Retail Manager  
Amerigas  
425 Virginia St  
North Bend, OR 97459

David Gray  
Plant Supervisor  
Ferrellgas  
1625 N. 7th St.  
Coos Bay, OR 97420

Tom McMann  
Transportation  
Coos Bay Lumber Co., I.L.C.  
P.O. Box 750  
Coos Bay, OR 97420

Carl Foster  
Partner  
Danish Dairy  
94912 Hwy. 42 S.  
Coquille, OR 97423

Rocky Buckles  
Operations  
Thomas & Sons Transportation Systems  
840 South Front St  
Coos Bay, OR 97420

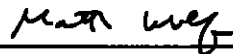
John W Brands  
President  
Central Dock  
P.O. 148  
Coos Bay, OR 97420

Doug Woolsey  
Transportation Manager  
Coos Bay Docks  
P O. Box 277  
Coos Bay, OR 97420

And via overnight delivery service and email on the following:

Oregon Department of Justice  
Attn: Katherine Georges  
1162 Court St. NE  
Salem, OR 97301  
katherine.georges@doj.state.or.us  
Sandra L. Brown  
Troutman Sanders LLP  
401 Ninth St., NW  
Washington, DC 20004-2134  
sandra.brown@troutmansanders.com

Oregon Department of Justice  
Attn: Stephanie Andrus  
1162 Court St. NE  
Salem, OR 97301  
stephanie.andrus@doj.state.or.us  
Ronald S. Yockim  
Attorney at Law  
430 S.E Main St  
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Matthew Wolfe